IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO. 1633 OF 2006

Atmaram Mahadeorao Kamble
versus
State of Maharashtra

CORAM: S. R. DONGAONKAR, J.
DATE: 09.10.2006

ORDER

1] Heard Mr. Shantanu Khedkar, Advocate for applicant and Mr. Ahirkar, APP for non-applicant.

2] Rule. Rule made returnable forthwith. Heard finally at the admission stage with consent of the parties.

3] This is an application under Section 482 of the Code of Criminal Procedure, by which the applicant has challenged the order passed by the learned Judicial Magistrate, First Class, 9th Court, Nagpur, dated 27th October, 2005, by which he rejected the application of the applicant for releasing the seized property in ornaments on his supratnama. The property seized is (1) three golden finger rings, (2) golden ear rings, (3) golden two bangles, and (4) one golden neckless (now converted in golden rod).

4] The applicant had claimed this property on Supratnama under Section 457 of Cr.P.C.

5] The learned Trial Judge after considering the matter on merits, rejected that application by his order dated 27th October, 2005.

6] While challenging this order, the learned counsel for the applicant has pressed into service the observations in the Judgment passed by this Court, reported in 2003 ALL MR (Cri) 2306 {Premraj Verma vs. State of Maharashtra}, wherein it has been held that no proof of ownership is necessary for getting the property released under Section 451 of Cr.P.C.

7] The learned APP appearing for the non-applicant State has opposed this application.

8] On perusal of the application and the order passed by the learned J.M.F.C., it seems that the say of the accused and the say of the witness from whom the said articles were seized, were not called by the learned J.M.F.C. It is necessary to know as to what they have to say, while releasing the property on Supratnama to the applicant, because the applicant is claiming the ownership of the said articles and he is also the complainant in the matter.

9] Under the circumstances, it was necessary for the learned Magistrate to obtain the say of the accused as well as the witness from whom these articles were allegedly seized on the application of the complainant/ applicant for release of the property on Supratnama and then pass the appropriate order on merit.

10] In the circumstances, the impugned order of the learned Magistrate is liable to be set aside. It is, therefore, set aside and the matter is remitted back to the learned J.M.F.C. for consideration of matter afresh for decision after obtaining the say of the accused as well as the witness from whom these articles are seized and decide the matter on merits. The learned Trial Magistrate is directed to decide the application within a period of one month from today.

Rule is made absolute in above terms.

JUDGE

Rvjalit.